

REMARKS

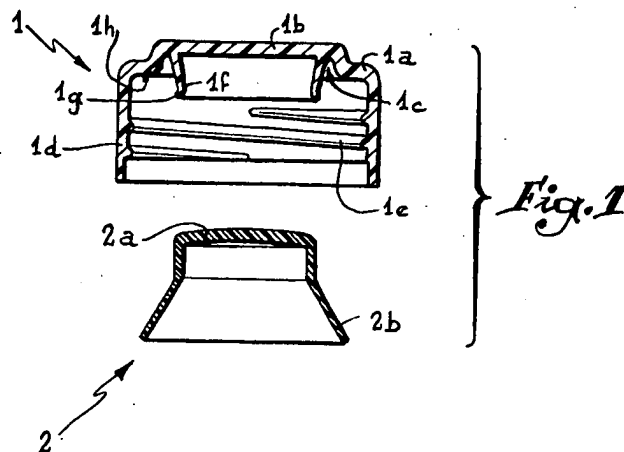
Status of Claims

Claims 1-43 are pending in the application, among which there is no claim 32 due to a numbering error in the original PCT application. Claim 1 has been amended herein, claims 5-12, 14-16, 20-21 and 23-31 remain withdrawn from examination, and claims 33-43 remain canceled. Reconsideration and re-examination of the pending claims is respectfully requested.

Traversal of the Pending Rejections

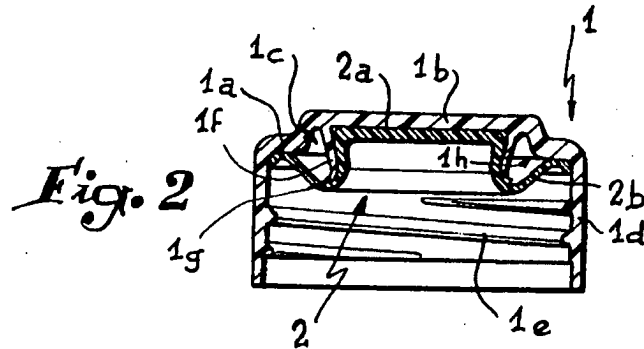
Claims 1-4, 13, and 17-19 stand rejected under 35 USC 102(b) over Babiol, US 4,261,465, and claim 22 stands rejected under 35 USC 103(a) over Babiol in view of McBride et al., US 5,356,021.

Babiol discloses a threaded bottle stopper with a seal. With reference to Babiol's FIG. 1, which is reproduced below, Babiol teaches that seal 2 is inserted into a capsule 1 prior to coupling with the ream of a bottle and is held in place by a tubular funnel 1f. Seal 2 is composed of a dish portion 2a, which is mated with funnel 1f, and of a truncated lip 2b, which extends outwardly of dish 2a:



Babiol also teaches at col. 1, lines 55-56 that funnel 1f has a considerable radial suppleness at seal level.

With regard to Applicant's claim 1, Babiol does not teach or suggest that, prior to mating with the rim of the opening, the inner portion of the diaphragm has no contact with the closed bottom of the capsule, because Babiol teaches that dish 2a of seal 2 contacts central part 1b of capsule 1. This is described, for example, in Babiol's FIG. 2, which is reproduced below:



Babiol also does not teach or suggest that, prior to mating with the rim of the opening, the diaphragm has an outer portion wider than an inner diameter of the capsule and affixed to a perimeter of the open end of the capsule or to an inner longitudinal wall of the capsule. If Babiol's seal 2 is equated to a diaphragm, as the Office Action has done, Babiol's FIG. 1 and the related description teach that seal 2 has a free truncated lip 2b that is not affixed to any portions of capsule 1 prior to mating with the ream of a bottle.

It is noted that the Office Action has equated "open end" in Applicant's claim 1 with free edge 1g of Babiol. It is submitted that such interpretation of Applicant's claim 1 is incorrect, because Applicant's claim 1 recites "a rigid capsule having a cup shape with a closed bottom and an open end," while Babiol teaches that free end 1g is supple and not rigid. Therefore, "open end" can only be equated to the outermost portion of Babiol's skirt 1d.

Moreover, the Office Action has stated that the coupling of Babiol's dish 2 with central part 1, as shown in Babiol's FIG. 2 (reproduced above), still satisfies Applicant's "spaced from" limitation because of possible infinitesimal spaces remaining between dish 2 and central part 1 after the coupling. It is submitted that a person skilled in the art would understand the limitation "spaced from" as not readable on Babiol's FIG. 2, because a person skilled in the art would understand "spaced from" as meaning "having a gap therebetween." By way if example, a book laying on the surface of a table would not be understood by a person skilled in the art as "spaced from" the surface of the table only because the texture of the paper may create infinitesimal spaces therebetween. Accordingly, the recitation "having no contact" in Applicant's claim 1 should not be understood as restricting the scope or breadth of the claim in relation to the prior recitation, but only as introducing an alternative language to expedite allowance of the application.

Based on the foregoing, Babiol does not teach all the elements of claim 1. Babiol also does not teach all the elements of claims 2-4, 13, and 17-19 for the same reasons as claim 1 and for the additional limitations contained therein. Therefore, the rejection of claims 1-4, 13, and 17-19 under 35 USC 102(b) is respectfully traversed.

With regard to claim 22, McBride fails to fill the deficiencies of Babiol. Therefore, the rejection of claim 22 under 35 USC 103(a) is respectfully traversed.

Conclusion

It is submitted that all objections and rejections in the present application have been addressed and that the present application is in condition for allowance. A notice to that effect is respectfully requested. A one month extension of time fee is enclosed herein.

Date: May 6, 2009

Respectfully submitted,

/Franco A. Serafini/
Franco A. Serafini, Registration No.52,207
Attorney for Applicant
Tel. (858) 456-2898

THEMIS LAW
7660 Fay Ave Ste H535
La Jolla, CA 92037